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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,124	07/11/2003	Daniel Roy Stewart		4092

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Daniel Roy Stewart
817 Simond: Avenue
Salt Lake City, UT 84116

EXAMINER

ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/618,124	STEWART, DANIEL ROY	
	Examiner	Art Unit	
	Gary E. Elkins	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

1. Note is made of the attached Notice of Draftsperson's Patent Drawing Review (Form PTO-948). Any questions regarding the drawing review should be directed to (703)305-0333, ext. 127.

Information Disclosure Statement

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specification

3. The abstract of the disclosure is objected to because the legal phraseology "means" was used in line 13. Correction is required. See MPEP § 608.01(b).

4. The disclosure is objected to because of the following informalities: (1) The brief description of the drawings is not set forth as a brief description, i.e. the brief description is being set forth as a detailed description. Note the brief description as shown in the cited patents. (2) On page 11, line under the brief description, numeral "11" is described as a protective garment. On page 12, line 7, numeral "11 is being defined as a bottom panel which is inconsistent with the previous description. (3) On page 11, lines 8-10 from the end, "with the pocket opening....protective garment 23" is unclear grammatically. (4) On page 13, lines 14-16 from

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the end, it is unclear how the bottom panel 11 is “alternatively on any three panels” and how element “27” as shown in the drawings constitutes a plurality of protective accessories as disclosed, i.e. element 27 is showing only a single accessory in the drawings.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are unclear with respect to whether a pack which is intended to have a protective accessory is claimed or whether the combination of a pack and an accessory is claimed. The preambles in each of claims 2-18 as well as in claim 1, last line and claim 15 refer to a protective accessory. However, no particular structure is set forth with respect to such an “accessory”. As disclosed and best understood from the description and drawing, the protective accessory is shown on page 1 of the drawings (elements 27-31). The claims appear to be only defining the elements shown in fig. 1 on page 1 of the drawings. If an accessory is intended to be claimed, appropriate limitations defining the “protective accessory” should be claimed.

Claims 4 and 8 contain the trademark/trade names “Velcro” and “Lycra”, respectively. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of

goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe textile-loop attachment means and a stretchable/insulating material and, accordingly, the identification/description is indefinite.

Each of the following is a double inclusion of an element within the claims, i.e. each is being reintroduced into the claims: claim 1, lines 5 and 6, “a first crease region”, “top and middle panel”, “a second crease region” and “bottom panel”, claim 7, “opposed edges” (the opposite lateral edges were previously defined in claim 6) and “second crease” (same element as the second crease region), claim 9, “sheet”, claim 10, “at least one panel”, claim 12, “straps, cords, buckles or other attachment means” (claim 1 defines the waistband as the means for attaching the device which appears to be at least part of the attachment means set forth in claim 12; if additional attachment elements are being defined, they should be clearly delineated as being additional to the waistband as opposed to alternative elements; the waistband is being claimed in all the dependent claims since the dependent claims include all the limitations of the parent claim(s)), and claim 14, “straps, cords, buckles or other attachment means” (claim 13 previously defined the attachment means), claim 15, line 3, “panels”.

In claim 1, line 8, “(securing means)” is unclear with respect to whether securing means is being claimed or not. If claimed, the phrase should not be in parenthesis. If not claimed, the phrase should not be in the claim.

The following each lack antecedent basis in the claims: claim 1, last two lines, “the combination pack and protective accessory” (no protective accessory previously set forth in the claim), claim 2, last line, “the crease” (only crease regions previously set forth), claim 5, “the

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lower panel”, claim 6, “the opposite lateral edges of said sheet” and “the opposed edges”, claim 10, “the invention”, claim 11, “the opening between the bottom panel and top panel”, claim 12, “said accessory”, claim 15, “the opposite lateral edges of the said protective accessory” and “the opposed edges”, claim 17, line 2, “said...pocket” and claim 18, “said...pocket” and “the invention”.

In claim 4, “similar” textile-loop attachment is unclear in scope, i.e. the metes and bounds of what is “similar” and what is not is unclear.

The following phrases are narrative in form and unclear with respect to what is being claimed: claim 9, “such as nylon”, claim 17, “such as elastic loops, cords or other attachments”, claim 20, “for example” and claim 21, “for example”. Claims must be clear with respect to what an applicant is intending to encompass. Narrative or exemplary language does not clearly define the metes and bounds of protection being sought.

In claim 11, the last three lines are unclear in that the folded region (23?) does not appear to be providing a cover or closure for an opening between the panels 11 and 13. As best understood, the pocket being closed by the flap 23 is between the bottom panel 11 and the middle panel 12 as depicted on page 2 of the drawings. Clarification and/or appropriate amendment is required.

Claim 13 is unclear with respect to how various parts of the body are stored and folded neatly in the pack.

In claim 15, “it’s” is unclear with respect to the previous element(s) referred to.

In claim 20, last line, “with multiple folds of invention” is unclear in meaning.

In claim 21, "an optional version" is unclear with respect to whether an additional material (in combination with the materials previously set forth in claim 1) or an alternative material is being claimed. If an alternative material is claimed, the claim is inconsistent with claim 1. Claim 21 is a dependent claim and, by definition, must include all the limitation of parent claim 1.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 3, 5, 8, 12 and 19-22, as best understood in view of paragraph 5 above, are rejected under 35 U.S.C. 102(b) as being anticipated by Tilve. Tilve discloses a pack comprising a sheet having at least three panels (11; 12; 24, 25) adapted and structured to be folded along crease regions therebetween, attachments (19, 20, 27, 28) fixed to at least two of the panels to secure the panels and a waistband formed by a belt to be extended through slots (29). No distinction is seen between the claimed pack and that shown in Tilve as a result of the claimed intended use of the pack as a protective device or article, i.e. the pack is considered to be capable of protecting the contents. With respect to claim 5, the panel 11 is considered to be of a size which would allow the panel to be serve as a seat or padding or insulation when unfolded. With respect to claims 19-22, the pack of Tilve is considered to be capable of the intended use of receiving advertising or signage, i.e. the sides of the pack are considered capable of the intended use claimed.

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8. Claims 1, 3, 5, 8, 10, 12 and 19-22, as best understood in view of paragraph 5 above, are rejected under 35 U.S.C. 102(b) as being anticipated by Netz. Netz discloses a pack comprising a sheet having at least three panels (18; 20; 22) adapted and structured to be folded along crease regions therebetween, attachments (32, 34) fixed to at least two of the panels to secure the panels and a waistband (16). No distinction is seen between the claimed pack and that shown in Netz as a result of the claimed intended use of the pack as a protective device or article, i.e. the pack is considered to be capable of protecting the contents. With respect to claim 5, the panel 22 is considered to be of a size which would allow the panel to be serve as a seat or padding or insulation when unfolded. With respect to claim 10, each of the sections is considered to include a pocket holding the inner insulative panel insofar as claimed. With respect to claims 19-22, the pack of Netz is considered to be capable of the intended use of receiving advertising or signage, i.e. the sides of the pack are considered capable of the intended use claimed.

9. Claims 1-5, 8, 10 and 12-22, as best understood in view of paragraph 5 above, are rejected under 35 U.S.C. 102(b) as being anticipated by Ross. Ross discloses a pack comprising a sheet having at least three panels (18; 19; 16) adapted and structured to be folded along crease regions therebetween, attachments (26,28) fixed to at least two of the panels to secure the panels and a waistband (50). No distinction is seen between the claimed pack and that shown in Ross as a result of the claimed intended use of the pack as a protective device or article, i.e. the pack is considered to be capable of protecting the contents. With respect to claim 5, the panel 18 is considered to be of a size which would allow the panel to be serve as a seat or padding or insulation when unfolded. With respect to claim 2, 10 and 12-18, note is made of the plurality of pockets formed within the pack of Ross which are capable of holding items (or accessories)

insofar as claimed. With respect to claims 19-22, the pack of Ross is considered to be capable of the intended use of receiving advertising or signage, i.e. the sides of the pack are considered capable of the intended use claimed.

10. Claims 1, 2, 4, 5, 8, 10 and 12-22, as best understood in view of paragraph 5 above, are rejected under 35 U.S.C. 102(b) as being anticipated by Holland et al. Holland et al discloses a pack comprising a sheet having at least three panels (14; 12; 16, 20) adapted and structured to be folded along crease regions therebetween, attachments (22) fixed to at least two of the panels to secure the panels and a waistband (9). No distinction is seen between the claimed pack and that shown in Holland et al as a result of the claimed intended use of the pack as a protective device or article, i.e. the pack is considered to be capable of protecting the contents. With respect to claim 20, note is made of the pocket (58a) in the fig. 11 emb. With respect to claim 5, the panel 14 is considered to be of a size which would allow the panel to be serve as a seat or padding or insulation when unfolded. With respect to claim 2, 10 and 12-18, note is made of the plurality of pockets and retaining elements formed within the pack of Holland et al which are capable of holding items (or accessories) insofar as claimed. With respect to claims 19-22, the pack of Holland et al is considered to be capable of the intended use of receiving advertising or signage, i.e. the sides of the pack are considered capable of the intended use claimed.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 6 and 7, as best understood in view of paragraph 5 above, are rejected under 35 U.S.C. 103(a) as being unpatentable over Tilve. Tilve discloses lateral side edges of a pack (see fig. 5) which are angled inwardly toward a foldable creased connection 13 between bottom and middle panels 11, 12, but does not disclose forming the edges with an arcuate shape. It would have been obvious to make the lateral edges with an arcuate shape in Tilve as a mere change in shape of the shape disclosed. No functional distinction is seen nor has any such distinction been asserted by Applicant with respect to the use of an arcuate shape as opposed to angled shape as in Tilve. Design applications are available to allow patenting of distinctions related solely to the appearance or shape of an article.

13. Claim 9, as best understood in view of paragraph 5 above, is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Tilve, Holland et al, Netz or Ross, each in view of Angus et al. Each of Tilve, Holland et al, Netz and Ross discloses all structure of the claimed pack except formation of the pack from neoprene with a thin fabric on one of the sides. Angus et al teaches that it is known to make a pack using neoprene with a thin fabric. It would have been obvious to make the pack in any one of Tilve, Holland et al, Netz or Ross from neoprene with a thin fabric (nylon) as taught by Angus et al to acquire the well known advantages of these materials in a pack as constructed within the prior art references. Neoprene with nylon outer layers is well known and used in this art.

14. Claim 11, as best understood in view of paragraph 5 above, is rejected under 35 U.S.C. 103(a) as being unpatentable over Ross in view of Spero. Ross discloses all structure of the claimed pack except a cover flap on the inner pocket (C). Spero teaches that it is known to make an inner pocket in pack with a closure flap (36, 38). It would have been obvious to make

the inner pocket (C) of Ross with a closure flap as taught by Spero to protect and secure the contents when the outer sections are opened. Pocket closure flaps are well known in this art.

Conclusion

15. An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450

16. The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

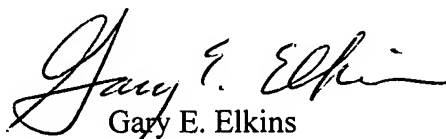
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.


Gary E. Elkins
Primary Examiner
Art Unit 3727

gee
10 December 2005